IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6152 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHIRAJBHAI KESHAVBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:
MR AJ SHASTRI for Petitioners
Mr.Arun Oza, Government Pleader, with
Mr.Premal Joshi, AGP, for the respondents

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE C.K.BUCH

Date of decision: 14/03/2000

ORAL JUDGEMENT (Per: Kadri, J.)

1. Petitioners, by filing this petition under Articles 226, 14, 19 and 21 of the Constitution of India, have prayed to issue writ of mandamus or any other appropriate writ, order or direction quashing acquisition proceedings initiated by the respondents in respect of lands of the petitioners bearing Survey Nos. 2, 30 and 32 situated in village Vanta and land bearing Survey No.228/7 situated in village Gavier.

2. The petitioners are agriculturists owning agricultural lands of villages Vanta and Gavier of Choriyasi Taluka. Executive Engineer, Road & Building, Surat, made a proposal to acquire agricultural lands of villages Mota Gavier, Magdalla, Bhimpore, Dumas, Vasta and Abhara, for the public purpose of extension of Airstrip of Surat Airport. The said proposal was scrutinized by the State Government and notification under Section 4(1) of the Land Acquisition Act, 1894, ('Act' for short), was issued which came to be published in the Government gazette on April 1, 1999. The petitioners submitted their written objections under Section 5A of the Act to the Land Acquisition Officer against the proposed acquisition of their lands situated at villages Vanta and Gavier. The main objection of the petitioners was that, within 1/2 kms of villages Dumas, Bhimpore and Aabhava, there is a vast portion of government unutilised waste land which can be utilised for the public purpose of extension of Airstrip of Surat Airport. The petitioners also raised objection that the agricultural lands, which were sought to be acquired for the said public purpose were the only source of their livelihood. The written objection made by the petitionerss is produced at Annexure "B" to the petition. It is averred in the petition that, even though the petitioners had filed their objection on May 5,1999, the Land Acquisition Officer had not given personal hearing to the petitioners, and, without hearing the petitioners with regard to objections raised against the proposed acquisition, the 2nd respondent had submitted his report under Section 5A(2) of the Act and on the basis of the said report of the Land Acquisition Officer, the State government had made declaration under Section 6 of the Act on June 15,1999. It is averred by the petitioners that on July 16, 1999 and July 22, 1999, the petitioners as well as their lawyer went to the office of the Land Acquisition Officer, but he was busy with a meeting and, therefore, he could not give hearing to the petitioners with regard to their objections. It is averred that, again, the petitioners on July 30, 1999 went to the office of the Land Acquisition Officer but the clerk of the said office informed the petitioners that the Land

Acquisition Officer was not available in the office and no hearing was given as he was busy with some other important work. It is contended by the petitioners that the State Agency, before grabbing the lands of the petitioners, has to evaluate the situation and, if there is any other land available with less minimum damage, then preference should be given to such portion of land instead of acquiring fertile agricultural lands of the petitioners. It is contended by the petitioners that objections raised by them were not at all considered by the Land Acquisition Officer and, without affording personal hearing to the petitioners, the Land Acquisition Officer had submitted his report under Section 5A(2) of the Act to the State Government and, therefore, acquisition proceeding right from issuance of preliminary notification under Section 4(1) of the Act and, ultimately, declaration under Section 6 of the Act, requires to be quashed.

3. Special Land Acquisition Officer filed affidavit in reply on behalf of the respondents, inter alia, contending that lands of the petitioners of village Vanta bearing Survey Nos.2, 30 and 32 and the lands of village Gavier bearing Survey No.228/7 were acquired for the public purpose of extension of Airstrip of Surat Airport. Notification under Section 4(1) of the Act was published in the Government gazette on April 1, 1999. The said notification was published at the place of lands acquired and at Gavier Gram Panchayat on April 15, 1999. The said notification was also placed on the Taluka notice board on April 8.1999 and was also published in daily newspapers, Navnirman on March 27, 1999, Gujarat Mitra on March 27, 1999, Gujarat Samachar on April 2, 1999, and Gujarat Prabha on April 1, 1999. It is further averred that Section 4(1) notification with respect to the lands situated in village Vanta was published in the Government gazette on April 1, 1999 and the said notification was published at the place of acquired lands of village Vanta on April 4, 1999, and at the Taluka notice board on April 8.1999. The said notification in respect of acquired lands of village Vanta was also published in two daily newspapers, namely, Gujarat Samachar on April 2,1999 and Nav Gujarat Times on April 1. 1999. It is submitted by the Special Land Acquisition Officer that, after receiving objection raised by the petitionerss in their application dated May 3, 1999, hearing was fixed on May 10, 1999 which was adjourned to May 17, 1999 and, on the said day, i.e. on May 17, 1999 the petitioners were heard and their objections were considered. It is further contended by the Special Land Acquisition Officer that notification under Section 6 of the Act was

published in the Government Gazette on June 15, 1999 and further procedure as per the provisions of the Act was followed. It is further contended that notification under Section 6 of the Act was published with urgency clause under Section 17(1) of the Act and possession of acquired lands was taken on August 14, 1999. It is averred that the authorities had scrupulously followed the procedure prescribed under the Act. As regards contention raised by the petitioner that government waste land can be acquired for the public purpose of extension of Airstrip of Surat Airport, the Special Land Acquisition Officer has stated that certain portion of government waste land which was suitable for extension of Airstrip of Surat Airport, had already been acquired and, therefore, the contention raised by the petitioners that alternative land is available which is not utilised, is baseless and the petition deserves to be dismissed.

4. The petitioners, by filing their affidavit in rejoinder, have contended that acquisition of fertile agricultural lands of the petitioners is nothing but colourable exercise of power which snatches away the entire agricultural lands from the petitioners. It is denied that the petitioners were heard personally and their objections were considered by the Land Acquisition Officer. It is stated that on May 7, 1999, the petitioner No.1 had gone to the office of the Land Acquisition Officer along with his advocate Shri Safibhai, but the Land Acquisition Officer was not available in the office and concerned clerk, Mr. Thakorebhai Gamit, had conveyed to the petitioners and their advocate that the Land Acquisition Officer was busy with some other work. It is stated that concerned clerk,namely, Mr.Gamit, had recorded in writing statement of the petitioners and the Land Acquisition Officer had not afforded opportunity of hearing to petitioner No.1 or his advocate. It is averred that on May 17, 1999, the petitioner No.1 and his advocate were not allowed to meet the Land Acquisition Officer who was duty bound to hear the petitioners personally with regard to their objections raised against the proposed acquisition. It is denied by the petitioners that possession of acquired lands was taken on August 14, 1999. It is contended by the petitioners that no personal hearing was given to the petitioners and mandatory provision of Section 5A of the Act was not followed and, therefore, declaration made under Section 6 of the Act deserves to be quashed and set aside.

5. We have heard learned counsel for the parties at

length. Learned counsel for the petitioners, Mr. Shastri, has vehemently submitted that the petitioners were not afforded personal hearing by the Land Acquisition Officer on May 17, 1999 and, therefore, declaration made under Section 6 of the Act was clearly in breach of provisions of Section 5A of the Act. Learned counsel for the petitioners further submitted that the petitioners were deprived of source of livelihood by the proposed acquisition even though there was other government waste land available with the respondents. Learned counsel for the petitioners further submitted that, in fact, the Land Acquisition Officer was duty bound to afford personal hearing to the petitioners, but, as he was busy with some other work, the Clerk in the office of the Land Acquisition Officer had recorded statements of the petitioners, which was in clear breach of mandatory provisions of the Act and, therefore, the whole acquisition proceeding is vitiated and deserves to be quashed.

6. Mr. Arun Oza, learned Government Pleader, assisted by Mr.Premal Joshi, learned Assistant Government Pleader, for the respondents, has vehemently argued that the respondents-authorities have scrupulously followed the procedure from the stage of issuance of preliminary notification under Section 4(1) of the Act to the making of the declaration under Section 6 of the Act. It is asserted by learned Government Pleader that the Land Acquisition Officer had afforded personal hearing to the petitioners on May 17,1999 when their objections were considered against the proposed acquisition.

7. At the time of hearing of this petition, we had called upon learned Government Pleader to produce the original papers of land acquisition proceeding with regard to acquired agricultural lands of the petitioners and other agriculturists for the public purpose of extension of Airstrip of Surat Airport. It is borne out from the record produced by the learned Government Pleader that, after receiving objections filed by the petitioners, on May 3, 1999, the Land Acquisition Officer had fixed date of hearing on May 10, 1999, for the purpose of considering objections submitted by the petitioners. The hearing was, thereafter, adjourned to May 17, 1999 and the petitioners were duly intimated. On May 17, 1999, petitioner No.1 was personally heard by the Land Acquisition Officer and his objections were again noted down by the Land Acquisition Officer. The fact that the petitioner No.1 was given personal hearing on May 17, 1999 is borne out from page 33 of the files produced before us with regard to present acquisition

proceeding. On the said page, the Land Acquisition Officer had also signed against oral objection raised by petitioner No.1. Thus, the contention raised by the learned counsel for the petitioners that no personal hearing was given by the Land Acquisition Officer under Section 5 of the Act, is devoid of any merit and deserves to be rejected.

8. Learned counsel for the petitioners has vehemently urged that hearing was not afforded by the Land Acquisition Officer himself but Clerk, Mr.Gamit, had recorded statements of petitioner No.1 and, therefore, the whole procedure was against the mandatory provision and, therefore, the acquisition proceeding should be quashed and set aside. In support of the submission, learned counsel for the petitioners has placed reliance on the decision of the Supreme Court in the case of Farid Ahmed vs. Ahmedabad Municipality, reported in AIR 1976 Supreme Court 2095. The facts in the case of Farid Ahmed (supra) before the Supreme Court were that no personal hearing was afforded to the land owners whose lands were acquired under Section 284J and 284N of the Bombay Provincial Municipal Corporations Act, 1949. In the facts and circumstances of the case before the Supreme Court, it was ruled that where order for acquisition is passed without granting any personal hearing it is a case of absolute noncompliance with a mandatory provision under Section 5A of the land Acquisition Act which is clearly applicable in the matter of acquisition under the Bombay Act. Such an order being at inception invalid, its invalidity cannot be cured by its approval of the Standing Committee or by its confirmation of the State Government. In our opinion, since the petitioners, in the present case, were given personal hearing by the Land Acquisition Officer on May 17, 1999, the decision rendered by the Supreme Court in the case of Farid Ahmed (supra) will not be any help to the petitioners. The contention raised by learned counsel for the petitioners that the hearing was not, in fact, given by the Land Acquisition Officer as their objections were noted down by Clerk, Mr. Gamit, of the said Office, is also devoid of any merit. We have perused the original file of the present land acquisition proceeding and we are satisfied that personal hearing was given to the petitioners by the Land Acquisition Officer himself and not by Clerk, Mr. Gamit. In the report submitted to the State Government under Section 5A(2) of the Act, the Land Acquisition Officer had considered all the objections raised by the petitioners. The State Government also having satisfied that the lands under acquisition were required for the public purpose of extension of Airstrip of Surat Airport,

had made declaration under Section 6 of the Act with urgency clause under Section 17(1) of the Act. As all the mandatory provisions were scrupulously followed by the respondents-authorities, we do not find any illegality or irregularity committed in the land acquisition proceedings.

9. The submission of learned counsel for the petitioners that government waste land was available which could have been acquired for the public purpose of extension of Airstrip of Surat Airport is also devoid of any merit and deserves to be rejected. In the affidavit in reply filed by the Land Acquisition officer, it is specifically averred that certain portion of government waste land which was found to be suitable for extension of Airstrip of Surat Airport was acquired for the said purpose. It is for the Land Acquisition Officer and the State Government to decide which land is suitable for the public purpose, namely, 'extension of Airstrip of Surat Airport'. The Land Acquisition Officer had considered all the relevant aspects with regard to extension of Airstrip of Surat Airport and also had taken into consideration the report of the expert before proposing to acquire the lands of the petitioners. Once declaration under Section 6 of the Act is made, it is not open for the petitioners to contend that, as some other alternative land was available, acquisition of petitioners' land requires to be quashed. In the present case, the State Government having satisfied that the lands of the petitioners and other agriculturists of villages Vanta and Gavier were required for the public purpose of extension of Airstrip of Surat Airport, had made declaration under Section 6 of the Act. Hence, it is not open for the petitioners to contend that the said acquisition took place as a result of colourable exercise of power. We do not find any merit in the submission of learned counsel for the petitioners that the present acquisition proceeding is vitiated as a result of colourable exercise of power or on the ground of mala fide. These were the only contentions raised by the petitioners and we do not find any merit in the above submissions.

10. Learned counsel for the State Government submitted that the Land Acquisition Officer had gone to deposit 80% of the amount of compensation in the District Court, but the District Court had not accepted the same on the ground that no references were pending before the Court. As the State Government has applied provisions of Section 17(1) of the Act, we direct the District Court to accept amount of compensation that may be tendered by the

Land Acquisition Officer before it.

10 As a result of foregoing discussion, the petition fails and is rejected. Notice is discharged with no order as to costs.

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